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In re Application of
Mueller et al.
Serial No.: 10/511,419
PCT No.: PCT/US03/11584
Int. Filing Date: 16 April 2003
Priority Date: 16 April 2002
Attorney's Docket No.: 07420.06543
For: CLEANING SPRAY NOZZLE

DECISION ON
PETITION
UNDER 37 CFR 1.137(b)

This decision is responsive to the "PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)" filed by facsimile transmission on 11 May 2005.

BACKGROUND

On 16 April 2003, applicants filed international application PCT/US03/11584, which claimed priority of an earlier United States provisional application filed 16 April 2002. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 16 October 2004.

On 14 October 2004, applicants filed a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by, *inter alia*, a copy of the international application, a declaration and authorization to charge applicant's deposit account \$59 to pay the basic national fee. These papers were assigned Application No. 10/511,419.

On 05 May 2005, the United States Patent and Trademark mailed the "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that the application had become abandoned for failure to provide the full U.S. Basic National Fee by 30 months.

On 11 May 2005, applicant filed the current petition along with authorization to charge the deposit account for the basic national fee, and the petition to revive fee.

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied (1) by a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," (2) by a proper reply, (3) by the petition fee required by law (37 CFR 1.17(m)), and (4) if the international filing date of the application is before June 8, 1995, any petition to revive under 37 CFR 1.137(b) must be accompanied by a terminal disclaimer and small entity fee of \$55.

Items (1) and (3) have been satisfied, and item (4) is not required.

With regard to item (2), the present petition included an authorization to charge the basic national fee to counsel's deposit account. However, in this regard 37 CFR 1.6(a) states in part:

"Facsimile transmissions are not permitted and, if submitted, will not be accorded a date of receipt in the following situations:

(3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2)(i)(A) through (D) and (F), and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile."

37 CFR 1.8(a)(2), states, in part:

"The procedure described in paragraph (a)(1) of this section does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on, the following:

(F) The filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.495(b)."

Although applicant filed the required statements and the petition fee, applicant has not provided a proper response in that applicant is not permitted to file the national stage filing fee by facsimile.

CONCLUSION

The petition to revive the application abandoned under 35 U.S.C. 371(d) is **DISMISSED** **without prejudice** as to the National Stage in the United States of America.

A proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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